

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

---

M-B-W, INC., and BARIKELL S.r.l.

Plaintiffs/Counterdefendants

v.

MULTIQUIP, INC., and  
ALLEN ENGINEERING CORPORATION,

Defendants/Counterclaimants

Case No. 07-C-390

---

MULTIQUIP, INC., and  
ALLEN ENGINEERING CORPORATION,

Counterclaimants

v.

M-B-W, INC. and BARIKELL S.r.l.,

Counterdefendants.

---

**ORDER**

M-B-W, Inc. and Barikell, S.r.l (Plaintiffs) seek, pursuant to a Rule 7.4 Expedited Non-Dispositive Motion to Amend Plaintiff's Complaint, to further amend their Complaint (Dkt. 1) and Second Amended Complaint (Dkt. 30) to add specific allegations that Multiquip, Inc., owner of U.S. 5,816,740 ("the '740 patent"), by and through its patent counsel, Frank J. Dykas, engaged in inequitable conduct before the United States Patent & Trademark Office during the application and prosecution of the patent.

Defendants Multiquip, Inc., and Allen Engineering Corporation do not oppose plaintiffs' motion to amend, but they do ask that should the court grant the motion, that the court also grant them additional time to conduct the additional discovery necessary

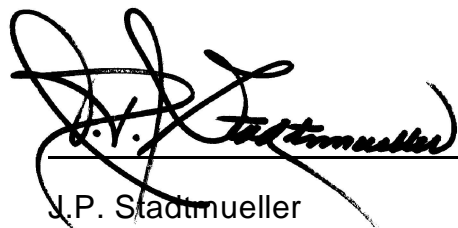
to defend against the newly added claim. Plaintiffs object to defendants' request, stating that defendants have no need to conduct additional discovery, but rather are attempting to protract this litigation as a tactical maneuver. Plaintiffs claim that extending discovery will unduly prejudice them, and that defendants have failed to show good cause for readjusting the case schedule. On the contrary, the court routinely holds that allowing a party to add a claim to a complaint is *per se* good cause to adjust the case schedule. Therefore, the court will grant plaintiffs' motion to amend, but will not direct the court to file the Amended Complaint at this time. Thus, plaintiffs can decide whether amending the complaint is worth the price of allowing defendants additional time to conduct discovery on the new claim. If it is worth it, plaintiffs can file the amended complaint, and the court will enter an order vacating the existing scheduling order, and ordering the parties to report back to the court on an agreed new schedule for completing the additional discovery implicated by the Amended Complaint.

Accordingly:

**IT IS ORDERED THAT** plaintiffs' Rule 7.4 Expedited Non-Dispositive Motion to Amend Plaintiffs' Complaint (Docket #61) be and the same is hereby **GRANTED**.

Dated at Milwaukee, Wisconsin, this 18th day of November, 2008.

BY THE COURT:



J.P. Stadtmueller  
U.S. District Judge